

STATE OF MICHIGAN  
IN THE SUPREME COURT  
APPEAL FROM COURT OF APPEALS

IN RE PETITION BY TREASURER OF  
WAYNE COUNTY FOR FORECLOSURE

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WAYNE COUNTY TREASURER,

Petitioner,

and

MATTHEW TATARIAN and MICHAEL KELLY,

Intervening Parties-Appellants,

v

PERFECTING CHURCH,

Respondent-Appellee.

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Supreme Court No. 129341

Court of Appeals No. 261074

Wayne County Circuit Court  
No. 02-220192-PZ

**AMICUS BRIEF OF MICHIGAN LAND BANK FAST TRACK AUTHORITY**

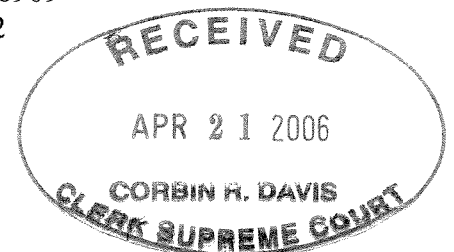
**ORAL ARGUMENT NOT REQUESTED**

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## **QUESTIONS PRESENTED FOR REVIEW**

- I. Does a trial court retain jurisdiction to grant relief from the provisions of a judgment of foreclosure pursuant to MCR 2.612(c), notwithstanding the provisions of MCL 211.28l(1) and (2)?**
  
- II. Does MCL 211.78l permit a person to be deprived of property without being afforded due process?**

## INTEREST OF AMICUS

In 1999 PA 123 (Act 123), the Legislature adopted a new process for foreclosure of ad valorem real property taxes under the General Property Tax Act (GPTA).<sup>1</sup> Counties had until December 1, 1999, to elect whether to participate in the foreclosure and sale of tax-delinquent property within the county. If a county chose not to participate, the State became responsible for obtaining titlework, sending notices, and handling the foreclosure hearings after the forfeiture of tax-delinquent property to the county treasurer.<sup>2</sup> Thirty-two counties opted to foreclose on their own delinquent taxes and 51 opted to allow the State to foreclose. Counties could revisit their initial decisions in December 2004. Seventy counties opted to foreclose and 13 opted to allow the State to continue to foreclose. The GPTA uses the term “foreclosing governmental unit” (FGU) to mean (a) the county treasurer or (b) the State, if a county has opted out of the foreclosure process. Thus, the State is the FGU in 13 counties.

Title to foreclosed parcels that are not sold at public auction or acquired by local units of government vests in the FGU.<sup>3</sup> In the 13 counties where the State is the FGU, title to those parcels vests in the Michigan Land Bank Fast Track Authority (MLBFTA).<sup>4</sup> Under the Land Bank Fast Track Act,<sup>5</sup> the MLBFTA has authority to acquire, assemble, dispose of, and quiet title to property, including tax-foreclosed property, and to provide for the financing of the acquisition, assembly, and disposition of property.<sup>6</sup> The MLBFTA is designed to promote economic growth by facilitating the use and development of tax-foreclosed properties. That use and development will be significantly impaired if the MLBFTA cannot rely on the language of

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<sup>1</sup> 1893 PA 206, MCL 211.1 *et seq.*

<sup>2</sup> MCL 211.78(3).

<sup>3</sup> MCL 211.78m.

<sup>4</sup> MCL 211.78m(7).

<sup>5</sup> 2003 PA 258, MCL 124.751 *et seq.*

<sup>6</sup> MCL 124.752.

the circuit court foreclosure judgment that states that the FGU "has good and marketable fee simple title to the property"<sup>7</sup> and that the FGU's "title . . . shall not be stayed or held invalid" after the expiration of the final redemption period set forth in the judgment.<sup>8</sup> Thus, the MLBFTA has a critical interest in the issues before the Court in this matter.

Under the former foreclosure process, title insurance companies generally declined to insure title to tax-foreclosed properties without a quiet title action, and then only reluctantly, if at all. This was primarily because persons purchasing tax-foreclosed property from the State could not be assured that former owners would not be able to reacquire the property if there had been an error in the foreclosure process. Lack of insurability of title made it difficult to redevelop blighted, tax-foreclosed property. To address this problem, the Legislature adopted a new foreclosure process under which former owners whose property is foreclosed without due process cannot sue to reacquire the property, but can bring an action against the FGU in the Court of Claims for the fair market value of the property interest they lost. If purchasers of property foreclosed under the new foreclosure process cannot be assured of receiving good title, one of the major components of the Legislature's drive to "strengthen and revitalize the economy of this state and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes"<sup>9</sup> will be thwarted.

For these reasons, the MLBFTA asks that the Court reverse the decision of the Wayne County Circuit Court setting aside the foreclosure and sale and determine that circuit courts do not have jurisdiction to set aside their foreclosure judgments due to lack of notice after expiration

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<sup>7</sup> MCL 211.78k(5)(d).

<sup>8</sup> MCL 211.78k(6).

<sup>9</sup> MCL 211.78(1).

of the redemption period set forth in the judgment in light of MCL 211.78k(6) and 211.78l and that MCL 211.78l is constitutional.

## ARGUMENT

**I. MCL 211.78l precludes an owner of any extinguished recorded or unrecorded interest in foreclosed property who claims inadequate or no notice from bringing an action for possession of the property against any subsequent owner.**

**A. Standard of Review**

Whether a circuit court has jurisdiction is a question of law that is reviewed de novo.<sup>10</sup>

**B. Analysis**

The MLBFTA supports the Appellants' argument that MCL 211.78l specifically bars the circuit court from exercising jurisdiction when a judgment of foreclosure is contested pursuant to MCR 2.612(B), because the owner of the foreclosed property claims to have not received notice of the proceedings. MCL 211.78l provides in part:

(1) If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a parcel of property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under this act shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages as provided in this section.

(2) The court of claims has original and exclusive jurisdiction in any action to recover monetary damages under this section.

The Tax Foreclosure Act is unambiguous and denies jurisdiction to the circuit court.

This court has affirmed that the judiciary is to interpret a statute based upon its plain language.

In *Omne Financial, Inc. v Shacks, Inc.*,<sup>11</sup> this Court decided that Michigan courts may not read

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<sup>10</sup> *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995).

<sup>11</sup> *Omne Financial, Inc. v Shacks, Inc.*, 460 Mich 305; 596 NW2d 591 (1999).



anything into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.<sup>12</sup>

**II. MCL 211.781 does not permit a person to be deprived of property without being afforded due process.**

**A. Standard of Review**

Constitutional issues are questions of law reviewed de novo.<sup>13</sup> The State and Federal Due Process Clauses are coextensive. Absent definitive differences in the text of the state and federal provision, common-law history that dictates different treatment, or other matters of particular state or local interest, courts should reject the "unprincipled creation of state constitutional rights that exceed their federal counterparts."<sup>14</sup> In *Dow v Michigan*,<sup>15</sup> this Court analyzed the constitutionality of Michigan's tax foreclosure process under the Federal Due Process Clause.

**B. Analysis**

The United States Supreme Court has held that a state action that causes a deprivation of protected rights to life, liberty, and property is not unconstitutional. What constitutes a constitutional violation is deprivation of a person's right without due process of law.<sup>16</sup> Mere negligence on the part of a governmental official is not a due process violation.<sup>17</sup> In *Parratt v*

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<sup>12</sup> *Omne Financial, Inc.*, *supra* at 311.

<sup>13</sup> *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998); *Carmacks Collision, Inc v Detroit*, 262 Mich App 207, 209; 684 NW2d 910 (2004).

<sup>14</sup> *People v Sierb*, 456 Mich at 523, quoting *Sitz v State Police*, 443 Mich. 744, 763; 506 NW2d 209 (1993).

<sup>15</sup> *Dow v Michigan*, 396 Mich 192; 240 NW2d 450 (1976).

<sup>16</sup> *Carey v Piphus*, 435 US 247, 259; 98 S Ct 1042; 55 L Ed 2d 252 (1978); *Parratt v Taylor*, 451 US 527, 537; 101 S Ct 1908; 68 L Ed 2d 420 (1981), overruled in part on other grounds, *Daniels v Williams*, 474 US 327; 106 S Ct 662; 88 L Ed 2d 662 (1986).

<sup>17</sup> *Daniels v Williams*, 474 US 327; 106 S Ct 662; 88 L Ed 2d 662 (1986).

*Taylor*,<sup>18</sup> the Court held there was no procedural due process violation for a deprivation of property without a pre-deprivation hearing where the state provided an adequate post-deprivation remedy in tort law. The Court further held that since the remedy was able to provide full compensation for the property loss, the state had adequate remedies in place to satisfy the requirements of due process.

The tax foreclosure process set forth in Act 123 provides adequate due process protection.<sup>19</sup> The question is whether MCL 211.781 provides an adequate remedy for the random error in the foreclosure process that fails to provide notice before the foreclosure. The action giving rise to this issue does not involve fraud or bad faith, but merely an error that forecloses property without adequate notice. MCL 211.781 establishes a remedy that allows a person who loses property without notice to recover the full fair market value of the property. Thus, the remedy provides full compensation for the property loss.

That money damages are an adequate remedy for the loss of real property is implicit in the eminent domain provisions found in Const 1963, art 10, § 2, requiring the payment of just compensation for the taking of property by the State. Just compensation is the market value of the property, taking into account all relevant factors.<sup>20</sup>

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<sup>18</sup> *Parratt v Taylor*, 451 US 527, 537; 101 S Ct 1908; 68 L Ed 2d 420 (1981), overruled in part on other grounds, *Daniels v Williams*, 474 US 327; 106 S Ct 662; 88 L Ed 2d 662 (1986).

<sup>19</sup> *Smith v Cliffs on the Bay Condominium Ass'n*, 463 Mich 420, n 3; 617 NW2d 536 (2000), cert den 532 US 1020 (2001).

<sup>20</sup> *Silver Creek Drain Dist v Extrusions Div, Inc*, 468 Mich 367, 378-379; 663 NW2d 436 (2003).

## CONCLUSION

The Michigan Land Bank Fast Track Authority asks that:


(1) The Court declare that circuit courts do not have jurisdiction to set aside a foreclosure judgment due to lack of notice after expiration of the redemption period set forth in the judgment in light of MCL 211. 78k(6) and 211.78l; and

(2) The Court declare that MCL 211.78l does not permit a person to be deprived of property without due process, as money damages in the amount of the fair market value of the property is adequate relief.

Respectfully submitted,

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